

VIRGINIA:

**BEFORE THE BOARD OF OPTOMETRY**

IN RE:      **BARRY M. LEBOWITZ, O.D.**  
              **License No. 0601-001568**  
              *Case 95-00490 (55429)*  
                                  **CONSENT ORDER**

Pursuant to §§ 9-6.14:11 and 54.1-2400(8) of the Code of Virginia (1950), as amended, an Informal Conference Committee ("Committee") of the Virginia Board of Optometry ("Board"), composed of Robin Rinearson, O.D. and Gordon W. Jennings, O.D., met with Barry M. Lebowitz, O.D. on February 8, 1995 in Henrico County, Virginia. Dr. Lebowitz appeared in person and was represented by John Wright, Esquire. The purpose of the informal conference was to receive and act upon evidence concerning the allegations in the Notice of Informal Conference dated December 21, 1994.

**FINDINGS OF FACT**

After consideration of the evidence and statements concerning the allegations, the Committee makes the following Findings of Fact:

1.      Barry M. Lebowitz, O.D. holds license number 0601-001568 issued by the Virginia Board of Optometry.
2.      From on or about April 1993 to September 1993, Dr. Lebowitz practiced optometry in a commercial, mercantile establishment. Specifically, Dr. Lebowitz utilized space, equipment and utilities provided by Sterling Optical, Richmond, Virginia, a mercantile establishment, without reimbursement to Sterling Optical. Further, Dr. Lebowitz allowed office staff from Sterling Optical to answer his phone and schedule appointments for him in his absence.

**CONCLUSIONS OF LAW**

The Board concludes that Finding of Fact No. 2 constitutes a violation of §§ 54.1-3205(A) of the Code of Virginia (1950), as amended.

**CONSENT**

Barry M. Lebowitz, O.D. by affixing his signature hereon, agrees to the following:

1. He has been advised specifically to seek the advice of counsel prior to signing this document;
2. He is fully aware that without his consent, no legal action can be taken against him except pursuant to the Virginia Administrative Process Act, § 9-6.14:1 et seq of the Code of Virginia;
3. He has the following rights, among others:
  - a. the right to a formal fact-finding hearing before the Board;
  - b. the right to representation by counsel; and
  - c. the right to cross-examine witnesses against him.
4. He waives all rights to a formal hearing;
5. He admits the truth of the above Findings of Fact; and
6. He consents to the following Order affecting his license to practice optometry in the Commonwealth of Virginia.

**ORDER**

WHEREFORE, on the basis of the foregoing Findings of Fact, Conclusions of Law, and with the consent of the licensee, it is hereby ORDERED that Barry M. Lebowitz, O.D. shall

CEASE AND DESIST from practicing in a commercial, mercantile establishment. It is further ORDERED that Dr. Lebowitz shall be assessed a monetary penalty of one thousand dollars (\$1000.00), said penalty to be paid to the Board by certified check or money order within thirty (30) days from the entry of this Consent Order. If said monetary penalty is not received within the prescribed deadline, an additional one hundred dollar (\$100.00) monetary penalty shall be assessed weekly, up to a maximum of one thousand dollars (\$1000.00). Failure to pay the full monetary penalty plus the additional assessment within one hundred (100) days of this Consent Order shall constitute grounds for an administrative proceeding.

Any violation of the foregoing terms and conditions of this Consent Order or any statute or regulation governing the practice of optometry in the Commonwealth of Virginia shall constitute grounds for the suspension or revocation of the license of Barry M. Lebowitz, O.D., and an administrative proceeding shall be convened to determine whether Dr. Lebowitz's license to practice optometry in the Commonwealth shall be suspended or revoked.

Pursuant to § 9-6.14:14 of the Code of Virginia, the signed original of this Consent Order shall remain in the custody of the Department of Health Professions as a public record and shall be made available for public release, inspection and copying upon request.

FOR THE BOARD:

*Lorin Pearson, OD.*  
President  
ENTERED: 5/18/95

B. Lebowitz

SEEN AND AGREED TO:

Barry M. Lebowitz  
Barry M. Lebowitz, O.D.

COMMONWEALTH OF VIRGINIA  
CITY/COUNTY OF Richmond

Subscribed and sworn to before me, a Notary Public in and for the city/county of Richmond, this 9th day of May, 1995, by Barry M. Lebowitz, O.D.

William E. Hendricks  
Notary Public

My Commission Expires: August 31, 1998

RECEIVED: May 22, 1995

BY: John W. Hasty  
John W. Hasty, Director  
Department of Health Professions

Certificate of Service

I hereby certify that a true copy of the foregoing Consent Order was mailed to Barry M. Lebowitz, O.D. at 6300 Chamberlayne Road, Mechanicsville, Virginia, 23111 on the 23rd day of May, 1995.

Elizabeth A. Carter, Ph.D./CSS  
Elizabeth A. Carter, Ph.D. Executive Director  
Board of Optometry